



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: R. P. Richards Construction Co.

File: B-248444

Date: May 11, 1992

Claudia C. Richards, Esq., for the protester,
Stephen T. Orsino, Esq., Department of the Navy, for the
agency.
Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's rejection of bid as nonresponsive due to defective bid bond is dismissed where bid bond did not contain any information other than bid opening date to identify bond to solicitation; stapling bond to bid is not sufficient assurance to government that surety intends to be bound under particular solicitation.

DECISION

R. P. Richards Construction Co. protests the rejection of its bid under invitation for bids (IFB) No. N62A74-89-B-6697, issued by the Department of the Navy for construction of a fleet logistics support center at Port Hueneme, California. Richards alleges that the agency improperly determined that Richards' failure to identify the solicitation on its bid bond rendered the bid nonresponsive.

We dismiss the protest.

The IFB required the submission of a bid bond in the amount of 20 percent of the bid. The bid bond submitted with Richards' bid correctly identified the project as involving construction work and the bid opening date as March 16, 1992. However, the blank on the bid bond form for the solicitation number was not filled in. Finding that the bid bond did not adequately identify the solicitation, the agency determined that it was uncertain whether the surety had bound itself under that solicitation, and therefore rejected Richards' bid as nonresponsive.

Richards contends that since its bid bond was stapled to the bid and referenced the correct bid opening date, and Richards had not submitted any other bids to be opened on that date, there could be no doubt that the bond was

intended to cover this IFB. Richards concludes that its bid therefore should have been considered responsive.

Richards' argument fails to state a valid basis of protest. The solicitation number referenced in a bid bond is a material element of the bond directly affecting its acceptability. 38 Comp. Gen. 532 (1959). A bid bond that lacks any other accurate indicia of the invitation under which the surety agreed to be bound, aside from the correct bid opening date, is materially defective and requires rejection of the bid; the presence of a correct bid opening date along with a generic description of the project are not by themselves enough to overcome the absence of a solicitation number. Fitzgerald & Co., Inc.--Recon., B-223594.2, Nov. 3, 1986, 86-2 CPD ¶ 510. Further, where the bid bond does not sufficiently identify the solicitation, the fact that the bond is stapled to the bid does not show that the bond was in fact issued for that solicitation. Joseph B. Fay Co., B-241769.2, Mar. 1, 1991, 91-1 CPD ¶ 234. The issue is whether the surety has sufficiently manifested its intention to be bound under the IFB so that the bond will be enforceable by the government. Expert Elec., Inc., B-228569, Nov. 6, 1987, 87-2 CPD ¶ 459. The fact that Richards may have intended the bond to cover the subject IFB, absent the necessary indication on the face of the bond, is not sufficient to make the bond enforceable. Id. Since Richards' bid bond admittedly did not include the required reference to the IFB or any other information that would identify the bond to this solicitation, its bid properly was rejected as nonresponsive.

Richards acknowledges the longstanding requirement that a bid bond identify on its face the solicitation to which it applies, but asks that we reconsider it. Specifically, Richards asserts that the requirement is improper because it fails to recognize that, under surety law, a surety properly may execute a bond in blank or partially in blank, thus giving the bidder implied authority to complete the blanks. Richards argues that it essentially completed the blank for the solicitation number by attaching the bid bond to the bid, thus identifying the bid bond to the particular solicitation.

We find Richards' argument unpersuasive. Even if Richards had the implied authority to fill in the solicitation number, it did not do so. Instead, it merely stapled the bond to the bid. As noted above, this does not sufficiently identify the solicitation under which the surety intended to be bound, since Richards inadvertently could have stapled the bid bond to the wrong bid just as easily as another bidder could have inserted a bid bond into the wrong envelope. Joseph B. Fay Co., supra. Whether or not Richards intended the bond to cover its performance under

this IFB, and for this reason submitted the bond attached to its bid; there is insufficient evidence that the surety intended to be bound under this IFB to remove all uncertainty concerning the enforceability of the bond; this uncertainty renders the bid bond defective and Richards' bid therefore nonresponsive. See Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "David Ashen", with a long horizontal stroke extending to the right.

David Ashen
Acting Assistant General Counsel